

Inventors: Sem and Hansen  
Serial No.: 09/747,174  
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examination polypeptide pharmacofamily 3. Claims 19-23 read, at least in part, upon the elected invention.

Applicants respectfully point out that two separate requirements must be met in order for restriction to be proper. <sup>it is</sup> ~~el m.~~ First, the inventions must be independent or distinct. Secondly, there must be a serious burden on the Examiner if restriction is required. See, for example, MPEP 803 (Restriction- When Proper), which states, in part:

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.

Page 800-3; emphasis added. Similarly, if the members of a Markush group are relatively few or so closely related that a search and examination of the entire claims can be made without serious burden, "the examiner must examine all claims on the merits, even though they are directed to independent and distinct inventions (MPEP, page 800-4, second column, first paragraph; emphasis added).

Applicants respectfully submit that the mere assertion that polypeptide pharmacofamilies 1-8 are patentably distinct inventions is not sufficient basis for the Election of Species requirement because the Office Action has not established that the search and examination of all eight polypeptide

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pharmacofamilies would be a serious burden. Applicants submit that, while polypeptide pharmacofamily 3 is patentably distinct from the other seven polypeptide pharmacofamilies, the eight polypeptide pharmacofamilies are related because the polypeptides in each pharmacofamily bind to NAD(P)(H). Because the polypeptides are related, a thorough search and examination of polypeptide pharmacofamily 3, would likely uncover art relevant to the other polypeptide pharmacofamilies. Furthermore, because claim 19 recites identifying at least two polypeptide pharmacofamilies, a thorough search and examination of the claim and its dependents requires that more than one pharmacofamily be considered. Therefore, Applicants respectfully request that the Election of Species Requirement be reconsidered and withdrawn.

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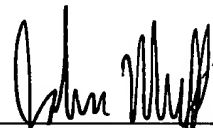


CONCLUSION

Applicants appreciate the Examiner's reconsideration of the Election of Species Requirement. The Examiner is invited to contact the undersigned agent or Cathryn Campbell if there are any questions relating to this application.

Respectfully submitted,

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Date

  
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